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 TIFFANY BRINKLEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TIFFANY BRINKLEY on behalf of
 herself and others similarly situated,

Plaintiff,

vs.

MONTEREY FINANCIAL SERVICES,
 LLC;

Defendant.

Case No. 16-CV-1103-WQH-WVG

Assigned to: Hon. William Q. Hayes

**SECOND AMENDED CLASS
 ACTION COMPLAINT FOR
 DAMAGES AND INJUNCTIVE
 RELIEF FOR THE UNLAWFUL
 RECORDING AND MONITORING
 OF TELEPHONE CALLS**

JURY TRIAL DEMANDED

Plaintiff TIFFANY BRINKLEY, on behalf of herself and others similarly situated, alleges upon personal knowledge as to herself and her acts stated herein, and as to all other matters upon information and belief as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff TIFFANY BRINKLEY (“Brinkley” or “Plaintiff”), on behalf of herself and others similarly situated, brings this action against Defendant MONTEREY FINANCIAL SERVICES, LLC (hereinafter referred to as “Defendant” or “Monterey”) for the unlawful recording and/or monitoring of telephone calls in violation of the privacy laws of California and Washington. Specifically, on October

15, 2013, Brinkley, on behalf of herself and others similarly situated, filed her “Class Action Complaint for Damages and Injunctive Relief for Unlawful Recording or Monitoring of Telephone Calls” (“Class Action Complaint”) against Defendant’s predecessor in interest,¹ Monterey Financial Services, Inc., in the San Diego Superior Court, alleging that Monterey unlawfully recorded telephone calls of California and Washington residents without their knowledge or consent, in violation of California Penal Code §§ 630, *et seq.*, and Washington Rev. Code §§ 9.73, *et seq.*, by asserting three causes of action (ECF No. 1-10 at pp. 145-161): (1) First Cause of Action for Invasion of Privacy Under Applicable State Statutory Laws for violations of Cal. Penal Code § 632, and Washington Revenue Code § 9.73.030, (*id.* at pp. 155-156, Class Action Complaint, pp. 11-12, ¶¶38-48); (2) Second Cause of Action for Unlawful Recording of Telephone Calls Under Cal. Penal Code §632.7 (*id.* at p. 157, Class Action Complaint, p. 13, ¶¶49-54); and (3) Third Cause of Action for Unlawful and Unfair Business Acts and Practices in Violation of California Business & Professions Code §17200, *et seq.* (*id.* at pp. 158-159, Complaint, pp. 14-15, ¶¶55-60). Additionally, Brinkley sought injunctive relief under all three of her causes of action. (*Id.* at Class Action Complaint, pp. 12, 13, 15, 47, 53, 60).

2. California Penal Code §§ 630, *et seq.*, and Washington Rev. Code §§ 9.73, *et seq.*, prohibit one party to a telephone call from intentionally recording or monitoring the conversation without the knowledge or consent of the other. These statutes are violated the moment the recording is made without the consent of all parties thereto, regardless of whether it is subsequently disclosed. The only intent required by the aforementioned statutory laws is that the act of recording itself be done intentionally. There is no requisite intent on behalf of the party doing the

¹ In this litigation, Defendant has asserted and the Court has found that Monterey Financial Services, Inc.’s interests were, by operation of law, vested to Monterey Financial Services, LLC upon a conversion constituting a “transfer of interest” under Cal. Corp. Code § 1158(b) on October 5, 2015.

1 surreptitious recording to violate the applicable state law, or to invade the privacy
2 right of any other person. Plaintiff alleges that, despite California's and Washington's
3 two-party consent laws and despite Defendant's representations that they maintain
4 compliance with all federal and state regulations, Defendant, on behalf of itself and
5 its many clients, continued to violate California's and Washington's two-party
6 consent statutes. Defendant has and continues to impermissibly record and/or
7 monitor its telephone conversations on telephone calls made or received by
8 Defendant from its principal place of business in Oceanside, California with persons
9 residing in California and Washington.

10 3. Defendant's employees and/or agents called and spoke to Plaintiff and
11 other persons residing in California and Washington numerous times, and Plaintiff
12 and other persons residing in California and Washington called and spoke to
13 Defendant's employees and/or agents numerous times, and Defendant has had a
14 policy and practice to secretly and illegally recorded and/or monitored such telephone
15 conversations. Plaintiff asserts that such surreptitious recording and/or monitoring
16 was done in violation of the telephonic privacy laws of California and Washington,
17 and that Defendant continues to secretly and illegally record and/or monitored its
18 telephone conversations with persons residing in California and Washington.
19 Plaintiff, on behalf of herself and other persons residing in California and Washington
20 similarly situated, seeks damages, injunctive relief, attorneys' fees and costs
21 according to statute.

22 4. Plaintiff does not seek any relief greater than or different from the relief
23 sought for other persons residing in California and Washington similarly situated who
24 are members of the Class and the Subclass (defined *infra*) of which Plaintiff is a
25 member. The action, if successful, will enforce an important right affecting the public
26 interest and would confer a significant benefit, whether pecuniary or non-pecuniary,
27 or a large class of persons. Private enforcement is necessary and places a
28 disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in the

1 matter.

2 **II. PARTIES**

3 5. Plaintiff TIFFANY BRINKLEY (“Brinkley” or “Plaintiff”) was, at all
 4 times relevant herein, a natural person, a resident of Tukwila, Washington and a
 5 citizen of Washington. On August 10, 2011, Plaintiff Tiffany Brinkley (“Brinkley”),
 6 entered into a contact to receive six real estate coaching sessions from one of
 7 Defendant’s customers, Real Estate Investor Education (“REIE”), for \$4,195. Ms.
 8 Brinkley paid REIE \$850, and financed the remainder of the purchase price through
 9 REIE’s “Retail Installment Contract,” financed by Monterey. *Brinkley v. Monterey*
 10 *Fin. Servs., Inc.*, 242 Cal.App.4th 314, 322 (2015). Brinkley never received any of
 11 the coaching sessions from REIE, which went out of business in August 2012. *Id.* at
 12 323. Monterey, headquartered in Oceanside, California, took the position that
 13 Brinkley owed it the remaining payments, and began aggressive collection efforts
 14 against her. *Id.* From its offices in Oceanside, California, Monterey’s employees
 15 and/or agents called and spoke to Brinkley in Washington on her cellular phone by
 16 dialing Brinkley’s cellular phone number with a Washington area code numerous
 17 times, and from Washington, Brinkley called Monterey’s offices in Oceanside,
 18 California and spoke to Monterey’s employees and/or agents using her cellular phone
 19 number with a Washington area code using a cellular phone numerous times. *Id.*
 20 Each of Brinkley’s telephone conversations with Monterey’s employees and/or
 21 agents were recorded by Monterey, including Monterey’s telephone conversations
 22 with Brinkley on February 14, 2013 and March 6, 2013 which were recorded by
 23 Monterey without her knowledge or consent causing harm and damage to Plaintiff.
 24 Thereafter, Monterey filed a small claims court action against Brinkley in San Diego
 25 and Monterey originally obtained a small claims court judgment against her.
 26 However, the judgment was reversed on her appeal to the San Diego Superior Court,
 27 whereby Brinkley obtained a judgment against Monterey for all of the monies
 28 Brinkley paid to Monterey pursuant to REIE’s “Retail Installment Contract.”

6. On October 15, 2013, Plaintiff Tiffany Brinkley initiated this action by filing a Complaint (ECF No. 1-3) against Monterey Financial Services, Inc. in the Superior Court of the State of California in and for the County of San Diego. On April 1, 2016, Brinkley amended the Complaint to add Defendant Monterey Financial Services, LLC as a defendant. (ECF No. 1-8 at 2). On May 6, 2016, Monterey Financial Services, Inc. and Monterey Financial Services, LLC (collectively, “Monterey”) removed the matter to this court. (ECF No. 1). During the first three years of litigation, Defendants had steadfastly refused to identify all of the times when Monterey recorded its telephone conversations with Brinkley and to the produce all of its recordings of its telephone conversations with Brinkley in response to informal and formal discovery. Only after the issuance of Magistrate Judge William V. Gallo’s November 7, 2016 Order (ECF No. 26), Defendants produced a “Class list,” i.e. a Excel spreadsheet entitled, “Brinkley Data List_November 8 2016_Highly Confidential Attorney Eyes Only” in .pdf and .xlsx file formats on November 8, 2016, at 4:18 p.m. and 4:19 p.m., respectively. Subsequently, on November 11, 2016, Monterey served a supplemental interrogatory response stating that it “produced a report dated November 8, 2016, which contains a list of Monterey accounts listing California and Washington street addresses with respect to which accounts telephone call (to and/or from) were recorded between October 15, 2009 and May 6, 2016. The list includes the most recent name, address, and telephone number associated with each account and also includes the dates of the first and last recorded calls associated with each account.” (Emphasis added). As set forth in the “Class list” produced by Defendants in this case, Defendants’ first recorded a telephone conversation with Brinkley on October 17, 2011 and last recorded a telephone conversation with Brinkley on October 9, 2013.²

² To date, Defendants have not produced (i) the first recorded telephone conversation with Brinkley on October 17, 2011, or (ii) the last recorded telephone

7. Defendant MONTEREY FINANCIAL SERVICES, LLC (“Defendant” or “Monterey”), at all times relevant herein, was and is a California limited liability company, with its headquarters and principal place of business located at 4095 Avenida de la Plata, Oceanside, CA 92056, and was and is licensed to do business, and was and is doing business in California and Washington. Monterey’s agent of service of process is Chris Hughes located at 4095 Avenida de la Plata, Oceanside, CA 92056. On or about October 5, 2015, Monterey Financial Services, Inc. was converted from a corporation into a limited liability company now known as Monterey Financial Services, LLC. Aside from the change from a corporation to a limited liability company, there is no material change to Monterey Financial Services, Inc.’s business, qualification to do business in California and elsewhere, location, structure, and/or operations. On April 1, 2016, Plaintiff’s filed an “Amendment to Complaint” pursuant to Cal. Code Civ. Proc. § 474 with the San Diego Superior Court which amended the Class Action Complaint to name “Monterey Financial Services, LLC” in place of fictitiously named defendant “Doe No. 1,” and such amendment of the Class Action Complaint was approved by the San Diego Superior Court on April 1, 2016. Subsequently, in its supplemental responses to Plaintiff’s requests for admissions nos. 1-3, dated November 11, 2016, Monterey stated that “[p]ursuant to the conversion,” Monterey Financial Services, Inc. “ceased to exist”

conversation with Brinkley on October 9, 2013. Defendants’ selective production of recorded telephone conversations in this case was specifically cited as an example by the California Supreme Court in *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal.4th 95 (2006) as a reason supporting its decision to enforce the California Invasion of Privacy Act, (Pen.Code §§ 630-637.5, hereafter “CIPA”), since it held that “if section 632—and, by analogy, other similar consumer-oriented privacy statutes that have been enacted in California” were not enforced, then, “companies may utilize such undisclosed recording to further their economic interests—perhaps in selectively disclosing recordings when disclosure serves the company’s interest, but not volunteering the recordings’ existence (or quickly destroying them) when they would be detrimental to the company.” *Kearney*, 39 Cal.4th at 126.

1 and transferred “all of its assets and liabilities, including any potential liability
 2 stemming from past conduct associated with the present lawsuit, ... to Monterey
 3 Financial Services, LLC.” Monterey, at all times relevant herein, surreptitiously
 4 recorded and had policy and a practice of recording and/or monitoring telephone
 5 conversations with the public, including persons residing in California and
 6 Washington, which was in violation of applicable statutory laws as set forth below.
 7 At all times relevant herein, Monterey’s employees and agents were directed, trained
 8 and instructed to, and did, record, monitor and/or eavesdrop upon telephone
 9 conversations with the public, including residents located in California and
 10 Washington.

11 **III. JURISDICTION AND VENUE**

12 8. Defendant removed this action from the Superior Court of the State of
 13 California for the County of San Diego alleging in its Notice of Removal (ECF No.
 14 1) that this Court has federal jurisdiction over this case pursuant to 28 U.S.C. §
 15 1332(d), as amended by the Class Action Fairness Act of 2005, Pub. L. 109-2 § 4(a)
 16 (“CAFA”). (ECF No. 1, ¶¶12-23). Specifically, Defendant alleged that “During the
 17 class period, Monterey recorded telephone calls to/from more than 1,000 individual
 18 who were physically located or residing in California and/or Washington.
 19 (Declaration of Chris Hughes (“Hughes Decl.”), ¶ 7) Thus, there are more than 100
 20 members implicated by Plaintiff’s proposed class.” (ECF No. 1, ¶15). Defendant also
 21 alleged that “the amount in controversy exceeds the jurisdictional limit of
 22 \$5,000,000” because “California Penal Code Section 637.2 provides statutory
 23 damages of up to \$5,000 per violation of section 632 or section 632.7. The
 24 Declaration of Chris Hughes concurrently filed herewith, establishes that Monterey
 25 recorded well over 5,000 telephone calls to/from individuals living in and calling
 26 from California alone during the class period. (Hughes Decl., ¶ 7).” (ECF No. 1, ¶19).
 27 Lastly, Defendant alleged that minimum diversity was met under CAFA since “at
 28 least some member of the putative class, namely Plaintiff, is a citizen of a State

(Washington) different than that of Defendant (California)” by alleging the following factual grounds: “At the time of the filing of the Complaint, Defendant was a California corporation, organized and existing under and by virtue of the laws of the State of California. (Hughes Decl., ¶ 2) In October 2015, Defendant converted from a California corporation to a California limited liability company, with its sole member being, from the legal conversion to the present, a citizen of California within the meaning of the Acts of Congress relating to the removal of cases. (*Id.*) From October 2015 to the present, Defendant was and is a California limited liability company. (*Id.*) Currently and before and since the commencement of this action, Defendant has had its corporate headquarters and principal place of business located in California. (*Id.*, at ¶¶ 3-4) Defendant’s California headquarters is and has been the place where the majority of Defendant’s corporate books and records are located. (*Id.*)” (ECF No. 1, ¶20). Defendant also alleged that “Defendant does not have and, before and after the commencement of this action, has not had its headquarters, executive offices, or executive officers based in Washington. (Hughes Decl., ¶ 5) Thus, Defendant is not now, and was not at the time of the filing of the Complaint, a citizen of Washington within the meaning of the Acts of Congress relating to the removal of cases. Defendant is now and has been a citizen of California for diversity purposes since this action commenced. 28 U.S.C. § 1332(c)(1).” (ECF No. 1, ¶21).

9. Defendant removed this action from the Superior Court of the State of California for the County of San Diego alleging in its Notice of Removal (Dkt No. 1) that venue is proper in the Southern District pursuant to 28 U.S.C. § 1441(a) on the grounds that “[t]he Complaint was filed and currently is pending in the California Superior Court for the County of San Diego. This District is the proper venue for this action upon removal pursuant to 28 U.S.C. § 1441(a) because it is the District that embraces the county where the state court action was pending.” (Dkt No. 1, ¶23).

IV. CONDUCT GIVING RISE TO VIOLATIONS

10. In 2013, Plaintiff had telephonic communications with certain employees

1 and/or agents of Defendant who were located in California. Specifically, on February
 2 14, 2013 and March 6, 2013, Plaintiff received at least one telephone call from an
 3 employee and/or an agent of Defendant and made at least one telephone call to an
 4 employee and/or an agent of Defendant at Defendant's principal place of business in
 5 Oceanside, California. During each of these two aforementioned telephone
 6 conversations, Plaintiff confirmed her identity and Plaintiff shared her personal
 7 information as she believed that each of these calls was confidential in nature and that
 8 such calls were not being monitored or recorded. At no time during either of her two
 9 aforementioned telephone conversations with employees and/or agents of Defendant
 10 was Plaintiff told that her telephone conversations would be or may be recorded or
 11 monitored, and at no time during either of her two aforementioned telephone
 12 conversations with employees and/or agents of Defendant did Plaintiff give her
 13 consent to Defendant to record or monitor such telephone conversations.

14 11. At the time when this action was originally filed in October 2013, on its
 15 website, <http://www.montereyfinancial.com/>, Monterey represented that Robert C.
 16 Steinke was the CEO, the Chairman of the Board, and was the controlling shareholder
 17 in Monterey, and that "[i]n 1989, Robert Steinke founded Monterey Financial
 18 Services, Inc to provide ... the delivery of three complimentary (sic) services: our
 19 consumer financing program, loan servicing, and delinquent debt collections."
 20 Furthermore, in October 2013, Monterey represented on its website that "Monterey
 21 maintains compliance with all federal and state regulations governing the purchasing,
 22 servicing, and collection of consumer debt. Regular training and testing related to
 23 debt collection has been implemented since its birth. Its Wygant Call Recording
 24 System is utilized for quality control, training purposes, and protection against false
 25 consumer complaints. Monterey passes sensitive consumer data and performance
 26 reports through it secure website and ftp site." Also, in a June 2010 interview posted
 27 on Monterey's website in October 2013, Scott Little, Vice President of Sales &
 28 Marketing of Monterey since 1994, was quoted as saying "Quite simply, it's the

1 phone calls that make the difference. Rather than relying on a letter series of some
 2 sort and then sitting back and waiting for payments to arrive, we get on the phone
 3 with the delinquent customer and establish a way to get your debt paid in full, as
 4 quickly as possible.”

5 12. After Plaintiff had a telephonic communication on March 6, 2013 with
 6 an employee and/or an agent of Defendant who was located in California without
 7 being told that her conversation would be recorded and without obtaining her consent
 8 at the beginning of the conversation to record such telephone conversation, in
 9 response to Plaintiff’s March 18, 2013 email, Jeffrey D. Smith, Financial Manager of
 10 Monterey, sent an email reply to Plaintiff on March 19, 2013 at 7:78 a.m. confirming
 11 that “We record our calls for Quality Assurance and training purposes” In
 12 response to Jeffrey D. Smith’s March 19, 2013 email, Plaintiff sent an email reply to
 13 Jeffrey D. Smith, Financial Manager of Monterey, on March 19, 2013 at 9: 14 a.m.
 14 stating that “[y]es, I would like to request access to any recording that you have of our
 15 conversation. I was not made aware of a recording” Thereafter, neither
 16 Monterey nor Jeffrey D. Smith produced a copy of Monterey’s recording of its March
 17 6, 2013 telephone conversation with Plaintiff or any other recording of telephone
 18 conversations with Plaintiff despite Plaintiff’s written request.

19 13. Defendant recorded all of its numerous telephone conversations with
 20 Plaintiff, and all of Plaintiff’s telephone conversations with Defendant entailed
 21 Plaintiff using her “cellular radio telephone” as such term is defined in Cal. Penal
 22 Code §632.7(c)(1). During each of her two aforementioned telephone conversations
 23 with employees and/or agents of Defendant, Plaintiff had an objectively reasonable
 24 expectation that her telephone conversations with Defendant were not being
 25 overheard or recorded.

26 14. At no time during either of her two aforementioned telephone
 27 conversations with employees and/or agents of Defendant was Plaintiff ever informed
 28 at the beginning of the telephone calls that her telephone calls were being recorded

1 and/or monitored. At no time during either of her two aforementioned telephone
 2 conversations with employees and/or agents of Defendant did Plaintiff give her
 3 consent to Defendant to record and/or monitor such telephone calls.

4 15. During the Class Period (defined *infra*), Defendant has had a policy
 5 and/or a practice of recording and/or monitoring telephone conversations with the
 6 public, including Plaintiff and other persons residing in California and Washington.
 7 During the Class Period (defined *infra*), Defendant's employees and agents are
 8 directed, trained and instructed to, and did and do, record and/or monitor their
 9 telephone conversations with the public, including Plaintiff and other persons
 10 residing in California and Washington.

11 16. During the Class Period (defined *infra*), Defendant has installed and/or
 12 caused to be installed a call recording system on its telephone lines used by its
 13 employees and/or agents at its principal place of business in Oceanside, California.
 14 Defendant used its call recording system to record, overhear and listen to each and
 15 every telephone conversation on its telephone lines.

16 17. During the Class Period (defined *infra*), Defendant has caused its calls
 17 with Plaintiff and other persons residing in California and Washington to be recorded
 18 and/or monitored without their knowledge or consent. Defendant's conduct alleged
 19 herein constitutes violations of the right to privacy of the public, including Plaintiff
 20 and other persons residing in California and Washington.

21 **V. CLASS ACTION ALLEGATIONS**

22 18. This action may be properly maintained as a class action pursuant to
 23 Rule 23 of the Federal Rules of Civil Procedure. Plaintiff brings this action on her
 24 own behalf and on behalf of all other persons similarly situated. Without prejudice
 25 to later revision, the class which Plaintiff seeks to represent is defined as follows:

26 All persons who, while residing in California and Washington, made or
 27 received one or more telephone calls with Defendant from October 15,
 28 2009 through the date of trial (the "Class Period") and did not receive
 notice at the beginning of the telephone call that their telephone
 conversation may be recorded or monitored (the "Class").

1 19. Without prejudice to later revision, the subclass which Plaintiff seeks to
2 represent as the subset of the Class is defined as follows:

3 All persons who made one or more telephone calls with Defendant while
4 using a “cellular radio telephone” as such term is defined in Cal. Penal
5 Code § 632.7(c)(1), during the Class Period and did not receive notice
at the beginning of the telephone call that their telephone conversation
may be recorded or monitored (the “Subclass”).

6 20. The members of the Class and the Subclass identified above are so
7 numerous that joinder of all members is impracticable. While the exact number of the
8 Class members is unknown to Plaintiff at this time, the individual identities of the
9 individual members of the Class and the Subclass are ascertainable through
10 Defendant’s records or by public notice.

11 21. There is a well-defined community of interests in the questions of law
12 and fact involved affecting the members of the Class and the Subclass. The questions
13 of law and fact common to the members of the Class and Subclass predominate over
14 questions affecting only individual class members, and include, but are not limited
15 to the following:

- 16 a. Whether Defendant has or had a policy of recording and/or monitoring
17 incoming and/or outgoing calls;
- 18 b. Whether Defendant disclosed to callers and/or obtained their consent
19 that their incoming and/or outgoing telephone conversations were being
20 recorded and/or monitored by Defendant;
- 21 c. Whether Defendant’s conduct of recording and/or monitoring incoming
22 and/or outgoing calls constituted violations of Cal. Penal Code §§ 630
23 *et seq.*; and/or Wash. Rev. Code §§ 9.73 *et seq.*;
- 24 d. Whether the members of the Class and/or Subclass are entitled to the
25 remedies available under the applicable privacy laws of California and
26 Washington; and
- 27 e. Whether the members of the Class and/or Subclass are entitled to an
28 award of reasonable attorney’s fees and costs.

22. Plaintiff’s claims are typical of the claims of the other members of the
Class and Subclass which all arise from the same operative facts involving illegal
recording or monitoring of telephone conversations on incoming and outgoing
telephone calls with Defendant in California and are entitled to the greater of

1 statutory damages of five thousand dollars (\$5,000) per violation or three times actual
2 damages, pursuant to Cal. Penal Code § 637.2(a); and/or actual damages or liquidated
3 damages computed at the rate of one hundred dollars (\$100) a day for each day of
4 violation, not to exceed one thousand dollars (\$1,000), and reasonable attorney's fees
5 and other costs of litigation, pursuant to Wash. Rev. Code § 9.73.060.

6 23. Plaintiff will fairly and adequately protect the interests of the Class and
7 the Subclass. Moreover, Plaintiff has no interest that is contrary to or in conflict with
8 those of the Class and Subclass she seeks to represent during the Class Period since
9 like all other Class members, Defendant recorded and/or monitored their telephone
10 conversations with Plaintiff on incoming and outgoing telephone calls with certain
11 employees and/or agents of Defendant located in California, and like all other
12 Subclass members, each of Plaintiff's two aforementioned calls with Defendant
13 entailed Plaintiff using her "cellular radio telephone" as such term is defined in Cal.
14 Penal Code § 632.7(c)(1). In addition, Plaintiff has retained counsel experienced in
15 handling class claims and claims involving illegal telephone recording and
16 monitoring litigation to further ensure such protection and intend to prosecute this
17 action vigorously.

18 24. Prosecution of separate actions by individual members of the Class
19 and/or the Subclass would create a risk of inconsistent or varying adjudications with
20 respect to individual members of the Class and the Subclass and would lead to
21 repetitious trials of the numerous common questions of fact and law in California and
22 Washington; and could also lead to the establishment of incompatible standards of
23 conduct for the Defendant, especially in the realm of the confidentiality of telephone
24 conversations and expectations of privacy. Such individual adjudications would be,
25 as a practical matter, dispositive of the interests of, or would substantially impair or
26 impede the interests of, the other members of the Class and/or the Subclass. Plaintiff
27 knows of no difficulty that will be encountered in the management of this litigation
28 that would preclude its maintenance as a class action. As a result, a class action is

1 superior to other available methods for the fair and efficient adjudication of this
2 controversy.

3 25. Defendant has acted or has refused to act on grounds that generally apply
4 to the Class and the Subclass and final injunctive relief is appropriate as to the Class
5 and the Subclass as a whole. Specifically, Defendant has recorded and/or monitored
6 calls with Plaintiff and other persons residing in California and Washington without
7 complying with California's and Washington's notice and consent requirements, and
8 injunctive relief is necessary to protect the future disclosure of the telephone
9 conversations already recorded by Defendant and to avoid ongoing violations in the
10 future.

11 26. The common questions of law and fact predominate over any questions
12 affecting only individual members. Furthermore, a class action is a superior method
13 for the fair and efficient adjudication of this controversy. Class-wide damages are
14 essential to induce Defendant to comply with applicable laws. The interest of Class
15 members in individually controlling the prosecution of separate claims against
16 Defendant is small because of caps on statutory damages per-illegally-recorded-calls.
17 Management of these claims is likely to present significantly fewer difficulties than
18 those presented in many class claims, e.g. securities fraud.

19 27. Proper and sufficient notice of this action may be provided to the Class
20 and Subclass members through methods best designed to provide adequate notice,
21 including potentially a combination of e-mail, and/or postal mail, and/or Internet
22 website, and/or publication.

23 28. Furthermore, the Class members' individual damages are insufficient to
24 justify the cost of litigation, so that in the absence of class treatment, Defendant's
25 violations of law inflicting substantial damages in the aggregate would go
26 unremedied without certification of the Class and the Subclass. Absent certification
27 of this action as a class action, Plaintiff and the members of the Class and the
28 Subclass will continue to be damaged.

29. Plaintiff also alleges that, as a direct result of Plaintiff bringing this action and the illegal recording/monitoring issue to Defendant's attention, Defendant has or will prospectively make substantial and important changes to their policy and practices of recording its employee's and/or agent's telephone conversations with persons residing in California and Washington. Specifically, Plaintiff alleges that, as a result of Plaintiff's efforts, Defendant has or will be required to cease to surreptitiously recording and/or monitoring telephone calls, or implement changes in its policies designed to avoid surreptitious recording and/or monitoring of telephone calls. In either scenario (Plaintiff as a catalyst for change), Plaintiff has enforced, or will enforce, an important right affecting the public interest, conferring a significant benefit, whether pecuniary or non-pecuniary, on the general public or a large class of persons.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Invasion of Privacy Under Applicable State Statutory Laws (Against Defendant on behalf of the Class)

30. Plaintiff incorporates and realleges each and every preceding paragraph as though fully set forth herein.

31. Cal. Penal Code § 632, and Wash. Rev. Code §§ 9.73.030(1)(a) prohibit one party to a telephone call from intentionally recording the conversation without the knowledge or consent of the other. The aforementioned state statutes are violated the moment the recording is made without the consent of all parties thereto, regardless of whether it is subsequently disclosed. The only intent required by the aforementioned state statutes is that the act of recording itself be done intentionally. There is no requisite intent on behalf of the party doing the surreptitious recording to violate California and/or Washington law, or to invade the privacy right of any other person.

32. Defendant employed and/or caused to be employed certain recording and listening equipment on the telephone lines of all employees and/or agents of

1 Defendant.

2 33. Plaintiff is informed and believes and thereupon alleges that all these
3 devices were maintained and utilized to overhear, record, and listen to each and every
4 incoming and outgoing telephone conversation over said telephone lines. As a result,
5 the persons who received telephone calls from or made telephone calls to Defendant
6 during the Class Period had their conversations recorded and/or monitored by
7 Defendant.

8 34. Said listening, recording, and eavesdropping equipment was used to
9 record, monitor, or listen to the telephone conversations of the Plaintiff and members
10 of the Class, all in violation of Cal. Penal Code § 632, and Wash. Rev. Code §
11 9.73.030(1)(a).

12 35. At the outset of the incoming and outgoing telephone conversations over
13 said telephone lines, Defendant failed to inform members of the Class that the
14 listening and recording of their telephone conversations was taking place. At no time
15 during these telephone conversations did Defendant or any employee and/or agent of
16 Defendant inform members of the Class that the listening and recording of their
17 telephone conversations was taking place and at no time did members of the Class
18 consent to this activity. Additionally, under Washington law, since the recordings of
19 the incoming and outgoing telephone conversations over said telephone lines do not
20 reflect an announcement or notice that Defendant was recording of these telephone
21 conversations at the outset of such calls, then consent to record cannot be considered
22 to have been obtained by Defendant from any person residing in Washington on any
23 such call. Wash. Rev. Code § 9.73.030(b)(3).

24 36. Defendant intentionally engaged in the aforementioned listening and
25 recording activities during the telephone conversations between the Class members,
26 on the one hand, and Defendant on the other hand, as alleged herein above. These
27 conversations were “confidential communications” within the meaning of California
28 Penal Code § 632 since members of the Class had an objectively reasonable

1 expectation that the conversations were not being overheard or recorded.

2 37. Additionally, Plaintiff and the Class who are residents of Washington
3 have lost money or property in that Plaintiff and the Class who are residents of
4 Washington have suffered and are each entitled to actual damages or liquidated
5 damages computed at the rate of one hundred dollars (\$100) a day for each day of
6 violation, not to exceed one thousand dollars (\$1,000), and reasonable attorney's fees
7 and other costs of litigation, pursuant to Wash. Rev. Code § 9.73.060 because
8 Plaintiff and the Class who are residents of Washington would not have made the
9 calls to Monterey that Monterey recorded without their consent, and/or would not
10 have answered calls made to them by Monterey that Monterey recorded without their
11 consent, and/or would have ended their calls with Monterey sooner, if they had
12 known that Monterey had recorded the calls without their consent, and/or if Monterey
13 had informed them at the beginning of the calls that the calls were being recorded.
14 Plaintiff and the Class who are residents of Washington have suffered actual damages
15 in the form of telephone service fees they incurred for the period of time they were
16 on the phone with Defendant's employees and/or agents as a result of the calls they
17 made and received on their telephones to and from Defendant; Plaintiff and the Class
18 who are residents of Washington have surrender more in their transactions with
19 Defendant than they otherwise would have since Defendant has recorded and possess
20 the recordings of their telephone conversations without their prior permission or
21 consent; and Plaintiff and the Class who are residents of Washington have a present
22 or future property interest diminished since Defendant has recorded and possess the
23 recordings of their telephone conversations without their prior permission or consent.

24 38. Based on the foregoing, Plaintiff and members of the Class are entitled
25 to, seek and below herein do pray for, their damages including but not limited to the
26 greater of statutory damages of five thousand dollars (\$5,000) per violation or three
27 times actual damages, pursuant to Cal. Penal Code § 637.2(a); and/or actual damages
28 or liquidated damages computed at the rate of one hundred dollars (\$100) a day for

each day of violation, not to exceed one thousand dollars (\$1,000), and reasonable attorney's fees and other costs of litigation, pursuant to Wash. Rev. Code § 9.73.060.

39. Because this case is brought for the purposes of enforcing important rights affecting the public interest, Plaintiff and members of the Class are entitled to and seek and below herein do pray for, recovery of their attorney's fees pursuant to the private attorney general doctrine codified in Cal. Code of Civil Procedure § 1021.5.

SECOND CLAIM FOR RELIEF
For Unlawful Recording of Telephone Calls Under Cal. Penal Code § 632.7
 (Against Defendant on behalf of the Subclass)

40. Plaintiff incorporates and realleges each and every preceding paragraph as though fully set forth herein.

41. During the Class Period, Defendant has routinely made and received telephone calls from its principal place of business in Oceanside, California with persons residing in California and Washington in the course of its business.

42. During the Class Period, Defendant has made use of a call recording system which allows them to secretly record telephone "communications" as such term is defined in Cal. Penal Code § 632.7(c)(3) between Defendant and persons residing in California and Washington while such persons were utilizing a "cellular radio telephone" as such term is defined in Cal. Penal Code § 632.7(c)(1) during telephone calls made or received by Defendant in California. Moreover, Defendant did, in fact, receive and secretly record such "communications" as such term is defined in Cal. Penal Code § 632.7(c)(3) with the members of the Subclass, without their knowledge or consent, in violation of Cal. Penal Code § 632.7(a).

43. Based on the foregoing, Plaintiff and members of the Subclass are entitled to, seek and below herein do pray for, their damages including but not limited to the greater of statutory damages of five thousand dollars (\$5,000) per violation or three times actual damages, pursuant to Cal. Penal Code § 637.2(a).

44. Additionally, Plaintiff and members of the Subclass who are residents

1 of Washington have lost money or property in that Plaintiff and the Class who are
 2 residents of Washington have suffered and are each entitled to actual damages or
 3 liquidated damages computed at the rate of one hundred dollars (\$100) a day for each
 4 day of violation, not to exceed one thousand dollars (\$1,000), and reasonable
 5 attorney's fees and other costs of litigation, pursuant to Wash. Rev. Code § 9.73.060
 6 because Plaintiff and members of the Subclass who are residents of Washington
 7 would not have made the calls to Monterey that Monterey recorded without their
 8 consent, and/or would not have answered calls made to them by Monterey that
 9 Monterey recorded without their consent, and/or would have ended their calls with
 10 Monterey sooner, if they had known that Monterey had recorded the calls without
 11 their consent, and/or if Monterey had informed them at the beginning of the calls that
 12 the calls were being recorded. Plaintiff and members of the Subclass who are
 13 residents of Washington have suffered actual damages in the form of cellular
 14 telephone service fees they incurred for the period of time they were on the phone
 15 with Defendant's employees and/or agents as a result of the calls they made and
 16 received on their cellular telephones to and from Defendant; Plaintiff and members
 17 of the Subclass who are residents of Washington have surrender more in their
 18 transactions with Defendant than they otherwise would have since Defendant has
 19 recorded and possess the recordings of their telephone conversations without their
 20 prior permission or consent; and Plaintiff and members of the Subclass who are
 21 residents of Washington have a present or future property interest diminished since
 22 Defendant has recorded and possess the recordings of their telephone conversations
 23 without their prior permission or consent.

24 45. Because this case is brought for the purposes of enforcing important
 25 rights affecting the public interest, Plaintiff and the Subclass seek recovery of their
 26 attorney's fees pursuant to the private attorney general doctrine codified in Cal. Code
 27 of Civil Procedure § 1021.5.

28 **PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiff prays for judgment against Defendant, on behalf of
2 herself and the members of the putative Class and Subclass, as follows:

3 1. That this action be certified as a class action on behalf of the proposed
4 Class and Subclass and Plaintiff be appointed as representatives of the Class and
5 Subclass;

6 2. For damages under Cal. Penal Code § 637.2 for each violation of Cal.
7 Penal Code §§ 632 for Plaintiff and each member of the Class; and/or damages under
8 Wash. Rev. Code § 9.73.060 for each violation Wash. Rev. Code § 9.73.030(1)(a),
9 for Plaintiff and each member of the Class;

10 3. For damages under Cal. Penal Code § 637.2, per each violation Cal.
11 Penal Code § 632.7(a), for Plaintiff and each member of the Subclass;

12 4. For an award of reasonable attorneys' fees as authorized by statute
13 including, but not limited to, Wash. Rev. Code § 9.73.060 and the provisions of Cal.
14 Code of Civil Procedure § 1021.5, and as authorized under the "common fund"
15 doctrine, and as authorized by the "substantial benefit" doctrine;

16 5. For costs of suit as authorized by statute including, but not limited to,
17 Cal. Penal Code § 637.2 and Wash. Rev. Code § 9.73.060;

18 6. For prejudgment interest at the legal rate; and

19 7. For such other and further relief as the court may deem proper.

20 Dated: December 10, 2018

KEEGAN & BAKER, LLP

21 s/ Patrick N. Keegan
22 Patrick N. Keegan, Esq.
23 Attorney for Plaintiff Tiffany Brinkley
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DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: December 10, 2018

KEEGAN & BAKER, LLP

s/ Patrick N. Keegan
Patrick N. Keegan, Esq.
Attorney for Plaintiff Tiffany Brinkley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 10, 2018, a true and correct copy of the **PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR THE UNLAWFUL RECORDING OR MONITORING OF TELEPHONE CALLS** was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system and indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's EM/ECF System.

s/ Patrick N. Keegan
Patrick N. Keegan, Esq.
pkeegan@keeganbaker.com